



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

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Docket No: 2907-21  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 28 June 2021. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Marine Corps on 17 May 1966. On 11 July 1966, while in a recruit status, you received non-judicial punishment (NJP) for being in an unauthorized absence (UA) status. On 29 November 1966, while in a student status, you received NJP for failing to obey an order. On 9 March 1967, you received NJP for having in your possession, with intent to deceive, an altered I.D. Card. On 14 July 1967, you were convicted at a Summary Court-Martial (SCM) for being disrespectful in language, disobeying a lawful order, and possession of an unauthorized liberty card. You were sentenced to confinement with hard labor (CHL) for one month and forfeitures of pay for one month. On 26 October 1967, you were convicted at a Special Court-

Martial for wrongful possession of 2.80 grams of marijuana. You were sentenced to reduction to E-1/Pvt, CHL for three (3) months, and forfeitures of pay for three (3) months. On 12 May 1968, you were convicted at a SCM for being in a UA status for a period of about six (6) hours. You were sentenced to reduction to E-1/Pvt, hard labor for thirty (30) days, and forfeitures of pay for one (1) month.

On 27 May 1968, while in the Republic of Vietnam (RVN), you were admitted to the naval clinic and, at the request of your battalion surgeon, received a psychiatric evaluation. You stated while in the RVN, you used marijuana and opium daily. The Assistant Division Psychiatrist conducted a Narrative Summary of your consultation and determined that you have a history of using addicting compounds and were a chronic user.

On 16 June 1968, while in the RVN, you were convicted at a SPCM for three (3) specifications of UA; and four (4) specifications of failing to obey an order, to wit: leaving your T/O weapon, leaving the compound after 1800 without permission from the officer-of-the-day, and not being present for tent muster. You were sentenced to CHL for six (6) months, forfeitures of pay for six (6) months, and awarded a Bad Conduct Discharge (BCD). On 27 June 1968, the Convening Authority (CA) approved the sentence as adjudged. However, on 13 July 1968, the General Court-Martial Convening Authority (GCMCA) ordered a rehearing of the SPCM held on 16 June 1968 because on the President of the Court failed to tailor pre-sentencing instructions to the evidence presented in extenuation and mitigation and failed to advise the court as to the limited use of matters pertaining to the uncharged misconduct. Furthermore, the GCMCA determined that the trial counsel stated his personal opinion that a BCD should be adjudged. Accordingly, the GCMCA found the errors were materially prejudicial to your substantial rights and disapproved the sentence. However, the findings of guilt were approved. Subsequently, on 29 August 1968, you were re-tried and re-convicted of the same charges. You received the same sentence; however, on 10 October 1968, the CA approved the sentence as adjudged but suspended the BCD, and CHL and forfeitures in excess of four (4) months, for the period of confinement and six (6) months thereafter.

On 19 December 1968, while in the RVN you were the subject of an Article 32 Investigation for violations of the Uniform Code of Military Justice. On 24 December 1968, after consulting with counsel, you submitted a request for discharge for the Good of the Service (GOS) in lieu of trial by General Court-Martial (GCM) for two (2) specifications of violation of a general order, to wit: failure to shave and having alcohol in your quarters area wall locker; wrongful possession of raw marijuana and sixty-six (66) marijuana cigarettes; wrongful wearing of an improper uniform; and wrongful appropriation of one (1) M70 grenade launcher. Your commanding officer recommended approval of your request. On 5 January 1969, the commanding officer forwarded the following additional charges to the discharge authority: three (3) specifications of UA; disrespect to a superior officer; two (2) specifications of failing to obey an order; and failing to maintain a clean rifle. On 24 January 1969, the discharge authority approved your request and directed discharge with an undesirable characterization of service. On 20 February 1969, while pending approval of your request for discharge, the Office of the Judge Advocate General (OJAG) conducted a Board of Review of the SPCM held on 29 August 1968 and determined there were no cumulative errors, and any possible prejudice was purged by the CA's reduction of the sentence. Furthermore, OJAG affirmed the findings of guilty and the sentence as approved.

On 24 February 1969, you were discharged with an other than honorable (OTH) characterization of service.

On 22 January 1971, the United States Court of Military Appeals (USCMA) reversed the decision of the Board of Review conducted on 20 February 1969, set aside your pleas of guilty and the sentence awarded, and ordered the charges to be dismissed. Subsequently, on 5 February 1971, OJAG sent a letter to the Commanding General, Force Logistics Command, FMF Pacific, requesting action be taken in accordance with the USCMA decision. On 13 February 1971, the SPCMCA issued a supplementary SPCM Order directing all charges and specifications be dismissed from the SPCM held on 16 June 1968, and all rights, privileges and property of which you have been deprived of by virtue of the findings of guilty and the sentence so set aside to be restored.

On 1 March 1972, you submitted a statement to the Commandant of the Marine Corps requesting your undesirable discharge be changed to a general, under honorable conditions (GEN), characterization of service, and that all rights, privileges and property be restored. You provided the OJAG Board of Review, the USCMA decision and the findings of the Supplementary SPCM for consideration. Subsequently, on 19 April 1972, the Judge Advocate Division (JAD), Headquarters Marine Corps responded to your request and determined that the undesirable discharge was not connected to the SPCM held on 16 June 1968, rather, it was as a result of your request for discharge for the GOS dated 24 December 1968 to escape trial by GCM.

In January 1977, you petitioned the Naval Discharge Review Board. On 24 May 1977, the Department of Defense (DoD) Discharge Review Program (Special) denied your appeal based on not meeting the criteria of the program, and determined your discharge should not be changed. You were notified of the board's decision on 21 June 1977.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that your court-martial was set aside, that all charges were supposed to have been dropped, and all rights, privileges and property that you were deprived of by virtue of the findings of guilty and the sentence set aside were to be restored. The Board noted that you received an undesirable discharge as a result of your request in lieu of trial by GCM and not due to the SPCM held on 16 June 1968. The Board concluded there was insufficient evidence of an error or injustice that warrants granting clemency in the form of an upgraded characterization of service.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your characterization of service based on your contentions above and a VA finding that was used in a rating decision for disability compensation for prostate cancer. The Board noted you did not submit advocacy letters, post-service documents, or medical documents linking your stated service-connected disability to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit

